

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20543

Smith
Pl 2 120001

FILE: B-208324

DATE: November 29, 1982

MATTER OF: Uni-Tek Manufacturing Company

DIGEST:

When, after quotations are requested under the small purchase procedures, there is a change in an agency's stated needs, or if the agency decides to accept a quotation that deviates from the specifications, all offerors should be advised and afforded an opportunity to quote on the basis of the revised specifications.

Uni-Tek Manufacturing Company protests the issuance of a \$4,985 purchase order to Electro-Arc Manufacturing Company for a metal disintegrator to be used at the U.S. Department of Agriculture's facility in Auburn, Alabama. Because the equipment ordered clearly did not meet the specifications included in request for quotations No. 403-A-ARS-82, a small purchase, small business set-aside, we sustain the protest.

At the outset, Agriculture argues that we should not consider Uni-Tek's protest because it was not filed within 10 days of July 1, 1982, when the firm learned of the proposed award to Electro-Arc. Uni-Tek, however, states that on July 1, when it telephoned the contracting officer to discuss Electro-Arc's alleged failure to comply with the specifications, it was told that she would look into it. On July 15, Uni-Tek further states, it recontacted the contracting officer and was told that Electro-Arc met specifications. Uni-Tek protested to our Office by telex dated July 20 and received July 21.

We find Uni-Tek's protest timely under our Bid Protest Procedures, 4 C.F.R. § 21.2 (1982). Although Agriculture advises us that the purchase order actually was issued to Electro-Arc on July 2, at this time Uni-Tek apparently believed that the contracting officer was still looking into the question of whether Electro-Arc met specifications; the first knowledge that Uni-Tek had of the agency's decision in this regard was in response to its July 15 telephone call. Since its protest to our Office was filed within 10 days of that call, we will consider it.

Uni-Tek asserts that Electro-Arc's offered Model 2-SA does not comply with Department of Agriculture specifications dated May 5, 1982. These describe the purpose of the equipment covered by the request for quotations as to "erode hardened materials that ordinary machine shop tools cannot cut." Among the specific requirements that Uni-Tek argues Electro-Arc's equipment does not meet is the capacity to remove a 3/4 inch broken tap in no more than four minutes. While the contracting officer's report to our Office states that the Model 2-SA has this capacity, we find no support for this conclusion in the record. To the contrary, the technical literature submitted by Electro-Arc with its quotation indicates that for a 3/4 inch tap, its Model 2-SA has a removal time of seven minutes. It therefore clearly does not meet specifications. On the other hand, Uni-Tek, which quoted \$6,510, offered equipment with a three-minute removal time.

We find the procurement deficient in two respects: (1) the Department of Agriculture modified or waived its specifications without contacting offerors other than Electro-Arc, and (2) it made no attempt to secure competitive quotations based on the revised specifications. Although it is apparent that the Department of Agriculture regards Electro-Arc's equipment as suited to its needs, the agency failed to so inform other offerors before issuing the purchase order.

The small purchase procedures in Federal Procurement Regulations Subpart 1-3.6 (1964 ed.) under which this procurement was conducted, are designed to reduce administrative costs, thereby improving opportunities for small business concerns to obtain a fair proportion of Government contracts. The regulations give contracting officers broad discretion to determine how the needs of the Government can best be met. Small purchases, however, must still be conducted and concluded with the concern for fair and equitable competition that is inherent in any procurement. R. E. White & Associates, Inc., B-205489, April 1, 1982, 82-1 CPD 294.


As a general rule in a negotiated procurement, when there is a change in an agency's stated needs or when an agency decides that it is willing to accept a proposal that deviates from those stated needs, all offerors must be

informed, either orally or through amendment of the solicitation, and must be afforded an opportunity to submit proposals on the basis of the revised requirements. When an agency modifies or waives the technical requirements which it has included in a request for quotations issued for a small purchase, fundamental fairness requires application of the same rule. See generally Quality Diesel Engines, Inc., B-265790, December 8, 1981, 81-2 CPD 441 (involving oral modification of a request for quotations).

We conclude that the Department of Agriculture's relaxation of the four-minute removal speed requirement as to Electro-Arc--without informing Uni-Tek and the two other firms submitting quotations on the same equipment--involved a departure from the principles of fairness and effectively denied those offerors an equal opportunity to compete.

The protest is sustained.

Because Electro-Arc already has delivered the equipment covered by the purchase order, remedial action is not possible here. However, by letter of today to the Secretary of Agriculture, we are recommending that action be taken to preclude similar procurement deficiencies in the future.

for 
Comptroller General
of the United States

END